



THE ROCKEFELLER UNIVERSITY

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September 6, 1977

Dear Berg et al,

You have received or will receive from Paul copies of different versions of a letter to be issued by Berg et al. three years later.

For many reasons I believe that your consideration of these drafts and what to do with them can not be considered in a totally dispassionate manner (as if any of us are still dispassionate on the subject of recombinant DNA) but in what is to me at this moment a highly fluid political situation. I will recount as best I can the current political situation as I see it, although I'm sure it's incomplete.

The House: HR 7897, commonly known as the Rogers Bill, has been reported out of the Subcommittee on Health and Environment, but has not been given to the parent Committee on Interstate and Foreign Commerce. Rogers has asked Phil Handler to have an Academy Committee look over the need for legislation. The Academy Committee has met. It consists of competent individuals, but no one remotely working with Rec-DNA. It should deliver its report by the end of the month. A statement by us coinciding with theirs could be disastrous. In a preliminary version of the report that I've seen, they will come out reluctantly for legislation in order to apply to NIH guidelines uniformly and protect the science from capricious actions of local governments. It will state that Rec-DNA experiments as performed so far are quite safe and that the absence of legislation will lead to no catastrophe. They prefer the Nelson-Moynihan amendment to the Kennedy Bill S1217 or to HR 7897 as being closest to simply converting the NIH guidelines into law. (All this is not final and also confidential.)

The Senate: The bill S1217 has been reported out of the Kennedy Health Subcommittee and also the H. Williams parent Committee on Human Resources. There was only one dissenting vote, that of Gaylord Nelson, although in the committee report Eagleton and Chafee objected to the free-floating new AEC-like Commission to regulate Rec-DNA. This Commission is a direct result of pressure on Kennedy by H. Holman and L. Horowitz. We must note that at every hearing of the Kennedy subcommittee Holman was present, although he has no credentials whatsoever. (It's not only the Stanford people who know him as he was once a post-doc here at Rockefeller.) Kennedy seems adamant about this edifice, and his being talked to by Derek Bok, Jerry Weisner, the Inter-Society Council of Biology, etc., etc., etc. has not visibly moved him. Now, however, there are rumors of some dissension in the Kennedy camp. Horowitz's personality gets to everyone sooner or later. Unfortunately I've lost my contact in the Kennedy camp, but believe I can establish some contact in a few weeks. This friction may not be all to the good.

file Berg et al letter on
recomb DNA

I think Kennedy knows he's way out on a limb and may decide to take it out on us, rather than staff since he might feel we (the scientists) got him into this. In any event Nelson introduced his amendment, co-sponsored by Moynihan. It was a rushed job, piecing together with a few words earlier versions of HR 7897. I think they're still open to suggestion for modification. However, I also believe that we may be a bit naive in just what it takes to make the guidelines law. Boilerplate such as the OSHA-type whistle blowing laws are insisted on by the unions and while I believe "tenure" for technicians to be wrong, I'm not sure any bill relating to hazards to workers can exist without them. It's like being against motherhood. Licensing of P1 - P3 by local bio-hazards committees is about as convenient as filing an MUA. In any event, law means at the minimum licensing of facilities and registration of projects and probably penalties. The details of the application (hypotheses, etc.), I think, could be negotiated. The Nelson amendment already served one purpose. During the last week of the session L.H. managed to get 30 minutes for S1217 on the floor. It was ready for vote. With the amendment there, 30 minutes was too little time and hence it was put off.

My contacts on the Senate side say that they now doubt the bills will see the floor before January at the earliest. Congress comes back to the Energy bill, the Panama Canal Treaty, etc., and wants to adjourn mid-October for elections. On the House side it depends on what Rogers does after the NAS report. Thornton of the House Science and Technology Committee has asked for sequential referral as has the Judiciary Committee (depends on the Speaker of the House). It is my strong feeling that if Thornton ever gets it, he'll bury the bill unless we really ask him not to.

Local situation:

California - Kean Bill held off 'til January 1978

Maryland - Bill passed making NIH guidelines law. Dies if Federal legislation passed. I know no details re: procedures

New York - Our noble governor vetoed the bill. There's lots of little things about which I'm sort of aware. The New York City Council has a resolution from the Friends of the Earth (well named, 'cause they ain't friends of people) prohibiting all Rec-DNA in New York City. I understand that since we are broke and run by state, only effect would be if Commissioner of Health got uppity, but the Hospital and Med School people have influence on him.

Princeton, U. of Washington, and Cambridge, Mass. all have some modified NIH plan.

Law suits: There are two suits that I know of.

- 1) FOA has one in Federal District of New York. It enjoins NIH from supporting, etc. Rec-DNA research. Suit based on NIH's failure to file Environmental Impact Statement and obtain clearance with Administrative Procedures Act and Council of Environmental Quality, etc. prior to issuing NIH guidelines. A technicality, but a well-drawn suit to this legal novice's eye.
- 2) Probably FOA instigated. Suit by man on behalf of 2-1/2 year old son in Frederick, Md. against construction of P4 facility

and doing of Rowe-Martin experiment. Judge ruled facility can be built and will decide about experiment when time comes. Doubt it'll ever be done as at one time HEW lawyers wanted an Environmental Impact Statement (E.I.S.) for this experiment. Fredrickson realized what a precedent this would be if each experiment needed an E.I.S.

Us:

There is a corporate entity known as Bergetal (includes Maxine and probably Sydney) which is distrusted and disliked by part of the scientific community and some politicians. Its members provided the "proponents" for the recombinant DNA battles of this past year. So I don't think anyone doubts its position. Strangely this attitude to Bergetal doesn't extend to us individually. I guess that's because we're all so nice. A sure sign of this status is that many current statements that recount the history of rec-DNA skip from the Gordon Conference of 1973 to the Asilomar guidelines.

If you're still awake, by now you're convinced you've received a letter from Roy Curtiss. I do apologize for my long-windedness (unlike me) but the critical questions we must face are what do we hope to accomplish and how to do it considering the current milieu. I've discussed the matter with a number of political types and also some friends at Rockefeller, etc. They generally believe that Bergetal should keep its collective mouth shut as no matter what it says it'll incite public interest in what seems to be a cooling scene. They feel it is a time for other groups such as the Gordon Conference, Gorbach et al., the Biological Societies, the NAS, to speak out to the Congress on the new data that make what the Congress is doing overkill. Temperate articles such as we've had recently in the Washington Post, Washington Star, New York Times, even Science, and Time magazine are all to the good. The view is that while the Gordon Conference, which turns over, or any of us as individuals can change our minds, a statement by Bergetal is an incitement to riot. In any event, since we'll differ in detail if not in principle with the NAS Committee, above all we mustn't overlap their time frame. Perhaps we should see if we have some kind of consensus and be prepared, as the situation develops this fall, to move rapidly. I'd suggest that if we do, our message be directed to the Congress, not the public or the scientific community, even though it would diffuse out.

My guess as to our consensus runs as follows: what we did three years ago was appropriate to the state of scientific knowledge and also was necessary to calm down a somewhat hysterical molecular biology community (a fact conveniently forgotten these days). We were blanketing this area with a few principles of work extended at Asilomar and further extended by the NIH committee. These were all guidelines designed to be flexible so that they'd change as the data base changed. The public interest lagged behind about two years and now lags behind the new data base. The political dynamite of this issue escaped us!! I believe that those of us who attended the Academy Forum last March would agree that it was probably our nadir point. Structurally it was set up to make it appear that the scientists were split 50-50, while at the same time

over a half dozen bills were being introduced into Congress. Returning home I was sure all was lost. Our current confidence just illustrates the volatility of the political process. I believe that we'd like the bills to go away and if necessary have the NIH guidelines extended as a code of practice by some kind of executive order. Is this possible? Paul said we got the veto in New York because we had to convince only one man. Ultimately that was true, but it took a lot of others to convince him. In Washington, I think it depends on Kennedy. I know that the aides on the House side are afraid of him. They feel even if they improve HR7897 we'll lose in any conference with the S1217 as any compromise is our loss. Therefore, unless there's a sign of change of heart by Kennedy I think we can only stop him with the counter bill by having the Societies and Universities lobby like crazy with the Congressmen from their States for the Nelson-Moynihan amendment.

I guess what I'm saying is the following. We can be purists and if we have a consensus put it out regardless of the political situation. As I told Paul over the phone, I've been busy so long calculating the results of moves -- did I push too soon? too late? were the right people contacted? will he be angry at the truth? how far can I stretch "truth" without lying? -- that I may have lost all perspective. Still I believe even if we make the purist statement or any other, I think we should await the return of Congress and try to find out through contacts and such people as the Harvard, MIT and Stanford lobbyists just what is the current status. We might go so far as to discreetly inquire what Rogers, Thornton, Nelson and even Kennedy, would think about a statement from us.

To be unequivocal, I favor our not doing anything now, but rather we try to ascertain whether we would agree to any legislation for whatever reason. The questions such as the changing data base have been all covered by others and we agree on this. I personally would accept a modified HR 7897 and Nelson-Moynihan bill with a sunset clause. I feel that if that's all we get, we've gotten out of this damn lucky. In fact, as some of you know, I am sort of committed to this. In order to get Moynihan to co-sponsor the Nelson amendment, I told him I would support the nine points of the Inter-Society Council. The decision had to be made fast and I felt his sponsorship was worth it. He's taking it seriously as he's sent all the Presidents of all the Universities in New York State his seconding remarks.

I've one last thought for us to consider. If we really believe that we have any collective power, perhaps we might consider a collective visit to Kennedy. Paul could write him and/or Stan could get in touch with L.H. I think he'd see us. If he'd see us and listen to us, it just might turn it all around.

Best,

Thornton

Norton

P.S. Wally Rowe just called re: my other hobby "cancer". Asked him about impact of statement by Bergetal. As the others, he saw nothing good, though was sympathetic to attempt to see Kennedy.